

AGREEMENT NO. 2020 – \_\_\_\_\_

**AGREEMENT BETWEEN UTAH COUNTY  
AND THE UTAH COUNTY PUBLIC DEFENDER ASSOCIATION  
FOR THE PROVISION OF LEGAL DEFENSE FOR THE YEAR 2020**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of January 2020, by and between **UTAH COUNTY**, a body corporate and politic of the State of Utah, hereinafter referred to as the **COUNTY**, and the **UTAH COUNTY PUBLIC DEFENDER ASSOCIATION**, a non-profit corporation, hereinafter referred to as the **ASSOCIATION**.

**WHEREAS**, the Legislature of the State of Utah has enacted the Utah Indigent Defense Act, which Act sets forth minimum standards for the defense of persons arrested for or charged with crimes who face the substantial probability of the deprivation of liberty and who are legally indigent and financially unable to obtain an adequate defense therefore; and which Act requires that counsel and defense resources be assigned to each indigent person who is under arrest for or charged with a crime in which there is a substantial probability that the penalty to be imposed is confinement in either jail or prison; and

**WHEREAS**, the Utah Indigent Defense Act provides that the Board of County Commissioners may, at County expense, arrange to provide such legal defense, including counsel and defense resources, by contracting with a defense services provider such as a legal aid association; and

**WHEREAS**, the **ASSOCIATION** is a legal aid association able to provide the legal defense, including counsel and defense resources, for indigent defendants as provided by law; and

**WHEREAS**, the parties entered into an Interim 2020 agreement on January 13, 2020 pending this anticipated agreement for the year 2020.

**NOW, THEREFORE**, the parties hereto agree as follows:

**1. AMENDMENT AND REPLACEMENT OF THE 2020 INTERIM AGREEMENT**

The parties agree that this 2020 Agreement for the provision of legal defense services amends and replaces the Interim 2020 agreement that the parties entered into on or around January 13, 2020. The parties agree that the terms of the Interim 2020 agreement are merged into this 2020 agreement such that the obligations contained within this 2020 agreement, especially the COUNTY's financial obligations, are not in addition to the obligations contained within the Interim 2020 agreement, but that this 2020 agreement contains all obligations of the parties concerning the 2020 calendar year regardless of the timing of fulfilling those obligations. The parties' obligations regarding the Indigent Defense Commission grant funding is excluded from this Section 1 "amendment and replacement" term of this agreement and the parties obligations in relation to the Indigent Defense Commission grant funding is found in other written agreements between the parties.

**2. CONSIDERATION**

A. The **COUNTY** does hereby engage the **ASSOCIATION** to perform the services recited and set forth herein and to pay to the **ASSOCIATION** for said services the sum of [\$\$\$5,469,597.57] for the term of January 1, 2020 through December 31, 2020 to be paid in quarterly payments, as follows:

The sum of \$1,367,399.39 to be paid on or before the 15th day of January 2020;  
The sum of \$1,367,399.39 to be paid on or before the 1st day of April 2020;  
The sum of \$1,367,399.39 to be paid on or before the 1st day of July 2020; and  
The sum of \$1,367,399.39 to be paid on or before the 1st day of October 2020.

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The **ASSOCIATION** agrees ~~to utilize the independent accounting services of Jeff Jensen, Certified Public Accountant, to to~~ provide payroll services and monthly financial reports to COUNTY through the use competent financial professionals.

B. It is understood and agreed that the maximum total cost of this Agreement shall not exceed \$5,469,597.57 except as provided in paragraph 3 below. Said total cost shall be inclusive of all professional fees and expenses that may be incurred by the **ASSOCIATION**.

C. The **ASSOCIATION** agrees to maintain any funds paid to the **ASSOCIATION** by the **COUNTY** under this Agreement which are not used during the calendar year 2020 for purposes outlined in this Agreement in an interest-bearing account to be used for further ~~customary and extraordinary contractual~~ expenses of the **ASSOCIATION**. The **ASSOCIATION** agrees to provide the **COUNTY** with a current accounting of such funds upon reasonable written demand and with any request made to the **COUNTY** for additional funds for extraordinary expenses here under ~~paragraph 3.~~

D. The **ASSOCIATION** agrees to provide a detailed invoice to COUNTY by expected funding source (County or grant funding or otherwise) at least 20 days before the expected payment date.

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### 23. **SERVICES TO BE RENDERED**

A. The **ASSOCIATION** agrees to provide, for the entire term of this Agreement, not less than twelve licensed attorneys to perform services under this Agreement, at least four of whom shall have had a minimum of two years' experience in handling felony matters. The **ASSOCIATION** further agrees to provide at least four attorneys to handle Juvenile Court matters, and at least four attorneys or groups of attorneys to handle conflict of interest cases in both felony and juvenile court matters as hereinafter provided in Paragraph 4. The

**ASSOCIATION** may also subcontract with other qualified attorneys to handle matters in the Utah County Justice Court, the appellate courts of the State of Utah, and indigent Utah County residents in involuntary mental health or intellectual disability commitment hearings. The **ASSOCIATION** agrees that all attorneys performing services under this Agreement, except subcontract attorneys, will work exclusively for the **ASSOCIATION**, a non-profit corporation, and will not maintain private legal practices during the term of this Agreement. The **ASSOCIATION** agrees to provide the **COUNTY** with the names and experience levels of all attorneys involved in providing services hereunder, at the request of the **COUNTY**.

B. The **ASSOCIATION** shall perform the legal services required hereunder in a professional and ethical manner under guidelines and standards as set forth in the Code of Professional Responsibility, and other such regulations and statutes as shall govern the practice of law in the State of Utah together with such other regulations or statutory provisions to which the **ASSOCIATION** may be subject as a result of federal law. Said services shall include those set forth in Paragraph 2C, immediately below, as well as investigatory services and other facilities necessary for a complete defense, and shall include the prosecution of State Court appeals or other remedies before or after conviction as required by current statutes and applicable case law and such remedial procedures that the attorneys of the **ASSOCIATION** consider to be in the interest of justice. The services shall not include discretionary appeals and discretionary writ proceedings.

C. The **ASSOCIATION** agrees to be the exclusive indigent defense service provider for the **COUNTY**, to assume all responsibilities thereof, to be the exclusive source of legal defense for indigent persons in Utah County, and to provide legal advice, representation, and defense resources as provided by §77-32-201(12), Utah Code, at all stages of the proceedings,

upon appointment by a Judge of the Utah County Justice Court, by a District Court Judge of Utah County, by a Juvenile Court Judge of Utah County, by a Justice of the Utah Court of Appeals, or by a Justice of the Supreme Court of Utah, provided that the person is arrested for or charged with a violation of the laws of the State of Utah or ordinances of Utah County, the penalty for which may possibly result in deprivation of liberty or other serious criminal sanctions. The **ASSOCIATION** also agrees to provide for the representation of indigent Utah County residents in involuntary mental health commitment hearings at the Utah State Hospital or in the courts of Utah County, as well as indigent Utah County residents in involuntary intellectual disability commitment hearings at the Utah State Developmental Center, the Utah State Hospital, or the courts of Utah County. The **ASSOCIATION** also agrees to provide for the representation of indigent Utah County residents for appointments made under §78A-6-1111, Utah Code.

D. The **ASSOCIATION** further agrees to provide legal advice and representation, at all stages of the proceedings, to individuals subject to extradition proceedings, upon appointment by a District Court Judge of Utah County, by a Justice of the Utah Court of Appeals, or by a Justice of the Supreme Court of Utah.

E. The **ASSOCIATION** agrees to provide the aforementioned services with respect to each and every indigent person entitled thereto except in those cases where, as defined herein, a legal conflict of interest exists such as would preclude an attorney employed by the **ASSOCIATION** from rendering his or her undivided loyalty to the client as provided in Utah Code Annotated Section 77-32-301(2). Conflict-of-interest matters will be handled as set forth in paragraph 4 below.

F. The **ASSOCIATION** agrees to submit itemized quarterly statements, within five days after the conclusion of each quarter, reflecting, for each jurisdiction in which counsel is appointed:

1. New Cases Received During Quarter
  - a. Felony
  - b. Misdemeanor
  - c. Appeals
  - d. Juvenile
2. Total Pending Cases-each category above
3. Total Cases Closed During the Quarter - disposition:
4. Number of conflict-of-interest cases referred during the quarter
5. Caseloads carried by court-appointed attorneys
6. Itemized financial statements
7. Funds expended in the following categories:
  - a. Payroll – itemized per employee
  - b. contract payments - itemized per contract
  4. Defense resources

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#### 4. **COVENANTS AND RESTRICTIONS**

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The ASSOCIATION agrees to:

- A. Employ a finance manager and only terminate said manager with the written consent of COUNTY.
- B. Employ a Director of the ASSOCIATION and only terminate said Director with the written consent of COUNTY.
- C. Restrict payment to any single employee or contractor to \$ \_\_\_\_\_ per year.
- D. Maintain the composition of the ASSOCIATION Board of Directors as follows:
  - a. 3 members selected by the current Board of Directors
  - b. 3 Utah County Senior Policy Advisors, ex officio
  - c. 1 member who is the Director of the IDC (appointed by the Director of the IDC?)

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**5. COUNTY-PAID COSTS**

**A.** The **COUNTY** shall be responsible for paying for court-ordered evaluations.

**B.** In the event a court appoints a non-contracting attorney in any matter, pursuant to Section 77-32-302, Utah Code or Section 78A-6-1111, Utah Code, the cost of providing such counsel shall be ~~paid fully by~~arranged between the **COUNTY** and the respective appointed counsel. The **COUNTY** shall pay for the defense of all capital cases when the **ASSOCIATION** is precluded by a conflict of interest.

**C.** In the event the **ASSOCIATION** incurs extraordinary expenses such as might be expected to be incurred in a capital case, or other extraordinary expenses that are not reasonably foreseeable or anticipated in the contract amount of this Agreement (including, but not limited to, expenses for representation of an indigent parent in termination-of-parental-rights case in district court), the **COUNTY** will allow the **ASSOCIATION** to make a written request for additional funds on a showing of just cause. Such additional funding will be agreed to between the parties by separate written agreement.

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**D.** The **ASSOCIATION** shall be responsible for paying all other expenses necessary to perform the required services, including, but not limited to, witness fees, travel costs of witnesses, expert witness expenses, copies of transcripts of preliminary hearings and depositions, investigation, and research, said costs being expressly included in the contract amount of this Agreement, ~~unless such expenses constitute "extraordinary expenses" as described above~~. The **ASSOCIATION** shall also be responsible for paying for the original transcripts of preliminary hearings, depositions, and trials, as well as for the original and one copy of transcripts of trials for use on appeal. It is anticipated that the contract amount will be sufficient to allow the

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**ASSOCIATION** to provide the investigatory resources necessary for a complete defense of each indigent person assigned representation, pursuant to Section 77-32-301(3), Utah Code.

**46. CONFLICT OF INTEREST**

A. A conflict of interest, such as would allow the **ASSOCIATION** and its subcontracting conflict counsel to withdraw from representation of a court-appointed client and require appointment of a non-contracting attorney at the **COUNTY'S** expense, pursuant to Sections 77-32-302(c) or 78A-6-1111 Utah Code, must be of such a nature as to be justifiable under case law, statute, or the Code of Professional Responsibility. It is agreed by the parties that a conflict of interest requiring appointment of a non-contracting attorney does not include withdrawals occasioned by a client's request for counsel of his choice or a client's disagreement with or personality conflict with an appointed counsel, or by scheduling conflicts of subcontracting attorneys. It is further agreed that any withdrawals by the **ASSOCIATION** from representation of a court-appointed client for other than an actual legal or ethical conflict of interest will require the **ASSOCIATION** to pay for additionally appointed counsel from its budget. The **COUNTY** agrees to pay the **ASSOCIATION** up to \$75,000.00 (seventy-five thousand dollars) to cover extraordinary expenses in conflict-cases. The **ASSOCIATION** agrees to timely provide the **COUNTY** with a detailed accounting of any extraordinary expenses paid pursuant to this Agreement. Funds in excess of seventy-five thousand dollars will require a separate written agreement between the **ASSOCIATION** and the **COUNTY**.

B. The **ASSOCIATION** agrees that in the event a conflict of interest is determined to exist between the **ASSOCIATION** and a client which does not require appointment of a non-contracting attorney pursuant to Paragraph 4A of this Agreement, the **ASSOCIATION** shall

**Commented [PJ3]:** Seems like we've talked about this \$75K provision before – does the PDA go out and contract for these cases or does the County. If the PDA, why is this money only authorized for extraordinary expenses? This provision seems to fit in 4.B.1 and is already there and this section should be deleted?



provide independent counsel for such client who can provide such client undivided loyalty, under the following circumstances:

1. For cases in the Fourth Judicial District Courts, the **ASSOCIATION** will enter into at least four separate subcontracts with other attorneys, or groups of attorneys experienced in handling criminal matters, to provide defense services in all criminal cases involving a conflict of interest with the **ASSOCIATION**, except those cases involving capital felonies. The **ASSOCIATION** will also enter into subcontracts, as needed, with other attorneys, or groups of attorneys experienced in handling criminal matters, to provide defense services in all criminal cases involving a conflict of interest with the **ASSOCIATION** for matters in the Utah County Justice Court and Utah State Appellate Courts. Contracts with conflict counsel shall not include any pricing structure that pays a subcontracting attorney a **fixed or flat fee** for providing legal representation. The **COUNTY** agrees to pay the **ASSOCIATION** up to \$75,000.00 (seventy-five thousand dollars) to cover extraordinary expenses associated with cases referred to contract attorneys when there is a conflict of interest with the **ASSOCIATION**. The **ASSOCIATION** agrees to timely provide the **COUNTY** with a detailed accounting of any extraordinary expenses paid pursuant to this Agreement. Funds in excess of seventy-five thousand dollars will require a separate written agreement between the **parties**.

2. In the Fourth District Juvenile Court, the **ASSOCIATION** will enter into at least four separate subcontracts with other attorneys, or groups of attorneys to provide representation in that Court and who shall be mutually responsible to provide conflict of interest representation for each other.

The **ASSOCIATION** acknowledges that the contract amount set forth in Paragraph 1 above includes amounts sufficient to provide conflict-of-interest counsel as required

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herein, other than the appointment of non-contracting attorneys as set forth in Paragraph 4(A), above.

3. The **ASSOCIATION** will also subcontract to provide representation of indigent Utah County residents, who, under Section 77-10A are witnesses at a grand jury, should the need arise.

4. The **COUNTY** agrees to contract with and compensate separate counsel in any capital felony case in which the **ASSOCIATION** has a conflict of interest, or in any other case where the **ASSOCIATION** is not required to provide conflict counsel under the terms of this Agreement.

**57. REIMBURSEMENT**

The **COUNTY** and the **ASSOCIATION** agree that any fees or costs ordered by any Court to be reimbursed for the representation of any indigent person shall be paid to the **COUNTY** as reimbursement of its expenditures to the **ASSOCIATION** under this Agreement.

**68. INDEPENDENT CONTRACTOR**

The **ASSOCIATION** agrees that it is an independent contractor and that none of the attorneys or employees of the **ASSOCIATION** shall be considered employees or officers of the **COUNTY**, neither shall they be entitled to any employee benefits as **COUNTY** employees as a result of the execution of this Agreement. It is anticipated that the contract amount will be sufficient to allow the **ASSOCIATION** to provide its employees with salaries and benefits comparable to those provided to **COUNTY** employees. The **COUNTY** agrees to allow employees of the **ASSOCIATION** to participate in some insurance and retirement benefits available to regular **COUNTY** employees.

Both parties agree that the **ASSOCIATION** shall comply with all laws regarding unemployment insurance, disability insurance, and workers' compensation. As such, the **ASSOCIATION** shall have no authorization, express or implied, to bind the **COUNTY** to any agreement, settlement, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the **COUNTY** except as expressly set forth herein. The compensation provided for herein shall be the total compensation payable hereunder by **COUNTY**. The **ASSOCIATION** shall furnish a Certificate of Insurance to the **COUNTY** evidencing that the **ASSOCIATION** has workers' compensation insurance for all employees of the **ASSOCIATION**.

**79. INDEMNIFICATION AND INSURANCE**

A. The **ASSOCIATION** agrees to indemnify and hold the **COUNTY** harmless from any and all liability whatsoever, which may arise from the **ASSOCIATION'S** performance of its obligations or from the **ASSOCIATION'S** failure to perform its obligations under the Agreement. This obligation to indemnify shall include reasonable attorneys' fees and all other reasonable costs which may arise from the **ASSOCIATION'S** actions. The **COUNTY** agrees to indemnify and hold the volunteer members of the **ASSOCIATION'S** Board of Directors harmless from any liability which may arise from the **ASSOCIATION'S** performance of its obligations or from the **ASSOCIATION'S** failure to perform its obligations under the Agreement, only to the extent such liability exceeds the coverage provided by the insurance policy insuring the volunteer members of the Board of Directors of the **ASSOCIATION**.

B. The **ASSOCIATION** agrees that it will carry and maintain for the full term of this Agreement, malpractice insurance with limits of not less than seven hundred seventeen thousand and one hundred dollars (\$717,100.00) per person in any one occurrence and two million four hundred fifty-five thousand and nine hundred dollars (\$2,455,900.00) in aggregate

for a single occurrence, insuring against any and all liability of the **COUNTY** which may arise from the **ASSOCIATION'S** actions or omissions. The **ASSOCIATION** shall furnish a Certificate of Insurance to the **COUNTY** evidencing that the **ASSOCIATION** has said malpractice insurance.

**810. TERMINATION**

The parties agree that either party shall have the right at any time after the effective date of this Agreement to terminate this Agreement for any reason, by giving the other party ~~ninety-~~ ~~(930)~~ days' written notice sent by registered mail, return receipt requested. If notice is so given, this Agreement shall terminate upon the expiration of the ~~ninety (9030)~~ calendar days and the liability of the parties hereunder for the further performance of the terms of this Agreement shall thereupon cease, but neither party shall be relieved of the duty to perform its obligations up to the date of termination. In the event of termination, the number of calendar days from and including January 1 to the date of termination shall be computed and prorated into the contract amount set forth in Paragraph 1 above. Any funds previously advanced by the **COUNTY** in excess of the amount computed by the above formula shall be returned to the **COUNTY** within sixty (60) days of the date of termination.

**911. DEFAULT**

In the event either party shall institute any action or proceeding against the other relating to the provisions of this Agreement, or any default hereunder, then, and in that event, the unsuccessful party in such action or proceeding agrees to reimburse the successful party for reasonable attorneys' fees and court costs incurred by the successful party.

**4012. DISCRIMINATION**

The **ASSOCIATION** assures that it will comply with Title VII of the Civil Rights Act of 1964, as amended, and that no person shall, on the grounds of race, color, religion, sex or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.

**14.3. NON-ASSIGNMENT**

This Agreement shall not, nor shall any interest in this Agreement, be assignable, as to the interest of the **ASSOCIATION**, without the prior written consent of the **COUNTY**, except the **ASSOCIATION** shall have the right, in its sole discretion, to enter into subcontracts with other attorneys, or groups of attorneys, to discharge its obligation to provide legal services in Juvenile Court cases, Justice Court cases, appellate cases, involuntary mental health and intellectual disability commitment cases, and cases in which a conflict of interest exists as defined herein.

**14.2. MODIFICATION OF AGREEMENT**

This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in a writing signed by each party.

**15.3. RECORDS**

The **ASSOCIATION** shall maintain such records and accounts as may be deemed necessary for the **COUNTY** to assure a proper accounting for all funds paid for the performance of this Agreement. Upon written request, records will be available for audit purposes to the

COUNTY and other authorized entities requiring such records. The ASSOCIATION agrees that by the end of the month following the end of each calendar quarter it will provide to the COUNTY and to the Utah County Auditor financial records relating to the preceding quarter from its accountant, to include a balance sheet and income and expense records. Records will be maintained by the ASSOCIATION for at least three (3) years, or such longer period as may be required by law or regulation, after the expiration of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be duly executed on the date first listed above.

BOARD OF COUNTY COMMISSIONERS  
UTAH COUNTY, UTAH

\_\_\_\_\_  
TANNER AINGE, Chairman

ATTEST:  
AMELIA POWERS GARDNER  
County Auditor/Clerk

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM  
DAVID O. LEAVITT  
Utah County Attorney

By: \_\_\_\_\_  
Deputy County Attorney

UTAH COUNTY PUBLIC DEFENDER ASSOCIATION

By: \_\_\_\_\_  
THOMAS H. MEANS, Director

DRAFT